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TO: Hon. Marybeth Peters

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FROM: Ewice Goldring

SUBJECT: H.R. 5469

DATE: 11-27-02

PAGES: 3

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November 25, 2002

The Honorable David M. Walker  
Comptroller General of the United States  
General Accounting Office  
441 G Street, NW  
Washington, DC 20548

The Honorable Marybeth Peters  
Register of Copyrights  
U.S. Copyright Office  
Library Of Congress  
403 Madison Building  
Washington, DC 20540

Dear Mr. Walker and Ms. Peters:

In the final days of the 107<sup>th</sup> Congress, Congress passed into law H.R. 5469, the Small Webcaster Settlement Act of 2002 ("SWSA"). Section 6 of the SWSA requires the Comptroller General, in consultation with the Register of Copyrights, to conduct a study and issue a report to the House and Senate Judiciary Committees about the economic arrangements among small commercial webcasters and third parties, and the effect that such arrangements have on statutory license royalty fees payable to sound recording copyright owners and performers under a percentage of revenue or expense basis. We are writing to provide the General Accounting Office and the Copyright Office with guidance on the information we are seeking in this report.

During the process that led to the provisions embodied in H.R. 5469, it became apparent that small commercial webcasters often have economic arrangements with third parties under which these parties can realize a significant portion of the revenues actually generated by the use of sound recordings on the service operated by the small commercial webcaster, without such revenues appearing as revenues of the webcaster. If the royalties owed under the statutory license by small commercial webcasters are based upon a percentage of the small commercial webcaster's revenues or expenses, then these economic arrangements could have the practical impact of artificially reducing the royalties payable to sound recording copyright owners and performers. Instead of receiving a royalty based upon the actual revenues generated from the use

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of their sound recordings, copyright owners and performers may receive royalties that are based only on a fraction of the total revenues generated from a small webcaster's use of sound recordings under the statutory license.

Section 114(f) of title 17, United States Code, is intended to compensate sound recording copyright owners and performers based on the full "fair market" value realized from the use of their creative works. Accordingly, the study and accompanying report by the General Accounting Office, in consultation with the Copyright Office, should provide Congress with a complete and accurate assessment of the nature and scope of the economic arrangements that exist between and among small commercial webcasters and third parties and the economic incentives that percentage of revenue statutory rates may create for structuring economic arrangements among small commercial webcasters and third parties that may be to the detriment of sound recording copyright owners and performers.

We look forward to the results of your work.

Sincerely,

  
F. James Sensenbrenner, Jr.  
Chairman  
John Conyers, Jr.  
Ranking Democratic Member